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**SUBDIVISION AGREEMENT**

**By and Between**

**CITY OF ROBBINSDALE**

**and**

**HY-VEE, INC.**

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This document drafted by:

KENNEDY & GRAVEN, CHARTERED (AMB)  
470 U.S. Bank Plaza  
200 South Sixth Street  
Minneapolis, MN 55402  
(612) 337-9300

**EXECUTION COPY**

**SUBDIVISION AGREEMENT**

This Subdivision Agreement (the “Agreement”) is made this \_\_\_\_ day of \_\_\_\_\_, 2016, by and between the City of Robbinsdale, a municipal corporation under the laws of Minnesota, having its principal office at 4100 Lakeview Avenue, Robbinsdale, Minnesota 55422 (the “City”), and Hy-Vee, Inc., an Iowa corporation, having its principal office at 5820 Westown Parkway, West Des Moines, IA 50266 (the “Redeveloper”).

WITNESSETH:

WHEREAS, the Redeveloper and the Robbinsdale Economic Development Authority (“REDA”) have entered into a contract for private redevelopment for the Terrace Mall site (the “Contract”), located at 3501 West Broadway Avenue, Robbinsdale, Minnesota (the “Project” or the “Property”); and

WHEREAS, the legal description of the Property is contained in Exhibit A, attached hereto; and

WHEREAS, this Agreement serves to further supplement the Contract already executed between the Redeveloper and REDA; and

WHEREAS, in accordance with the Contract entered into between the Redeveloper and REDA, the City is requiring this Agreement to address additional infrastructure improvements which the Redeveloper must install; and

WHEREAS, the Redeveloper has agreed to make certain infrastructure improvements as memorialized in this Agreement.

NOW, THEREFORE, in consideration of the covenants and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

**AGREEMENT**

1. **Recitals.** The City and Redeveloper agree that the foregoing Recitals are true and correct and are fully incorporated into this Agreement.
2. **General Provisions.** This Agreement represents the entire agreement between the parties with respect to the improvements contained herein. The parties hereto acknowledge that the Redeveloper and the Robbinsdale Economic Development Authority have executed another Contract for Private Redevelopment which outlines additional responsibilities of Redeveloper with respect to the Project. The parties agree that this Agreement is meant to supplement, rather than replace, any provision in that Contract.

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3. **Minimum Improvements.** The parties hereto agree that the Redeveloper shall be solely responsible for making the following minimum improvements (the “Minimum Improvements”) as part of its redevelopment of the Project site:

A. **County Road 81 Intersection Improvements.** Upon full execution of this Agreement, and upon approval of Hennepin County, Redeveloper shall be responsible for designing and constructing an intersection on County Road 81 as shown on the final plat, which is attached hereto as **Exhibit B** (the “Intersection”). The Redeveloper shall be solely responsible for seeking all permits, approvals, and any other necessary consideration needed before proceeding with the construction of the Intersection. Prior to the City issuing any required permits associated with the Intersection, the Redeveloper shall provide a copy of its plans and specifications for the same to the City’s Engineer, who shall approve the design of the Intersection. The Redeveloper shall also secure all necessary approvals from the County Engineer, and any other necessary agencies. During construction of the Intersection, the City’s Engineer shall be allowed full access to the construction site to inspect construction activities. The City’s Engineer shall notify the Redeveloper if any aspect the construction of the Intersection is not in material compliance with the approved plans and specifications for the same, and the Redeveloper shall be responsible for repairing or replacing such deficiencies to ensure that the Intersection is in material compliance with the approved plans and specifications. The Redeveloper shall also be solely responsible for obtaining all necessary approvals and inspections from Hennepin County.

B. **Installation of Semaphore at County Road 81 Intersection.**

Redeveloper shall construct a semaphore at the Intersection required herein. Redeveloper shall solely bear the cost of this improvement, including any costs associated with County approval of such improvement. The semaphore required herein shall conform to all specifications required by the City and Hennepin County. Additionally, the Redeveloper shall be responsible for conducting all ongoing maintenance and improvements to the semaphore as such improvements may be required by the City or Hennepin County. Redeveloper shall also be solely responsible for all costs associated with operating the semaphore until such time as the County releases the City from the City’s obligations for the payment of operating costs associated therewith. If the Redeveloper fails to undertake such ongoing maintenance and improvements, the City has the right but not the obligation to make such improvements, and assess those costs pursuant to Section 12 herein.

C. **Installation of Utilities.**

Redeveloper shall install all utilities necessary to serve the Project area, as determined by the City. The Redeveloper shall not install any utilities until they have been approved by the City and/or its engineer. Additionally, the City Engineer shall inspect, at Redeveloper’s cost, the installation of any and all utilities.

Utilities installed as required by this Agreement shall be at all times classified as private

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utilities upon the Property. The City shall have no responsibility to repair, replace, or maintain these items at any point in the future. Redeveloper, for itself and on behalf of its successors and assigns, hereby agrees to maintain the utilities in proper working order at its sole cost.

### D. Landscaping

Redeveloper shall install and maintain all landscaping required by the City within any right of way abutting the Property, and upon the Property itself, as are set forth in the plans and specifications for Redeveloper's redevelopment of the Property as approved by the City Council of the City of the City of Robbinsdale.

### E. Driveway Easement and Parking Lot

City acknowledges that City has been granted an easement for that portion of the driveway area which may be constructed on a portion of the Property beginning at the edge of the vacated Broadway Avenue, and extending through the Property until terminating at the Intersection to be constructed under Paragraph A of this Section. The Redeveloper further agrees that it will complete, at its sole cost, all required improvements upon the Property, including the adjacent property owned by North Memorial Medical Center, to construct the necessary parking lot, driveway area, and all other infrastructure improvements consistent with plans approved by the City. The Redeveloper shall be solely responsible for securing any necessary agreements and/or permissions from North Memorial Medical Center to complete this work.

### F. Drainage, Grading, Paving, and Storm Water Management.

Redeveloper shall provide storm water drainage, grading, paving and storm water management details for review and approval by the City Engineer. Upon completion of the project, the Redeveloper will provide as-built survey information including location of all easements and above and below ground infrastructure (private and public) together with elevations land of within the development site. Information to be provided in electronic format (AutoCAD) and in State Plane South Minnesota Co-ordinates as well as copies of all easement and access agreements between future property owners.

4. **Parking License Agreement.** The parties hereto have further agreed that the City will provide a license to the Redeveloper to use City right-of-way along West Broadway Avenue as additional parking for the Project, the form of which is attached hereto as Exhibit C. The City also intends to enter into a similar agreement with North Memorial Medical Center with respect to property which it owns, whereby North Memorial Medical Center will gain similar license rights. In the event that the City right-of-way along West Broadway Avenue that is to be licensed to Redeveloper in the license agreement attached hereto is the subject of a certificate of title issued by the Hennepin County Registrar of Titles to Redeveloper prior to execution of a license agreement, the City's obligation to enter into a license agreement for those portions of the right-of-way as herein defined shall be waived on the basis that the City will no longer have any

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interest in which to provide a license, as the City's right-of-way is set to automatically vacate as a condition of the property being registered. Additionally, if a certificate of title is issued with respect to the City right-of-way along West Broadway Avenue that is to be licensed to Redeveloper in the license agreement, which is attached hereto, to Redeveloper after a license agreement becomes effective, such license agreement shall terminate upon the automatic vacation of the street under the doctrine of merger.

5. **Off-sale Liquor Store.** The City and Redeveloper contemplate a potential relocation of the City's off-sale liquor store to the new facility to be constructed on the Property. At such time as Redeveloper is designing the building improvements to be constructed by Redeveloper on the Property, Redeveloper and the City hereby agree to negotiate the terms of any lease for such off-sale liquor store in good faith; provided, however nothing herein shall be construed to require either party to enter into a lease or any other agreement for the same. In the event Redeveloper and the City are able to mutually agree on the terms of a lease for such off-sale liquor store, Redeveloper will endeavor to design the building so that architectural features of the same emphasize the multiple store entrance and uses.

6. **Inspections.** The Redeveloper hereby grants the City and its agents and assigns the right to access the Project property, upon reasonable notice, for the purpose of inspecting the installation of any of the Minimum Improvements required under this Agreement. The City shall not undertake any intrusive inspection or testing without the prior written consent of the Redeveloper, which shall not be unreasonably withheld.

7. **Performance.** The Redeveloper shall begin performance of this Agreement in no event later than May 31, 2018. Redeveloper's performance under this Agreement shall be deemed to begin at such time as Redeveloper takes any action authorized under the building permit issued by the City. All of the Minimum Improvements contemplated herein shall be substantially completed within 18 months of the Redeveloper taking any action authorized under the building permit issued by the City, and final completion shall occur not more than three months after substantial completion. Failure to complete the Minimum Improvements by this date shall constitute an Event of Default under Section 8 of this Agreement.

8. **Events of Default.** In the event that either party hereto fails to comply with the provisions contained herein, such failure shall constitute an event of default, and the other party shall be entitled to terminate this Agreement upon providing notice as outlined in Section 9 hereof. Further, in the event that Redeveloper fails to comply with the provisions contained in Section 3 of this Agreement with respect to the design and construction of certain Minimum Improvements of the Project, the City may elect, at its sole discretion, to complete the Minimum Improvements and assess the costs of those improvements to the Property pursuant to Section 12 of this Agreement. Notwithstanding the foregoing, no termination of this Agreement by the City shall permit the City to terminate the License Agreement described in Section 4 herein.

9. **Notice.** Except as otherwise expressly provided in this Agreement, any notice or other communication under this Agreement or any related document by either party to the other shall

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be sufficiently given or delivered if it is dispatched by registered or certified United States mail, postage prepaid, return receipt requested, or delivered personally to:

- (a) in the case of the Redeveloper: Hy-Vee, Inc.  
5820 Westtown Parkway  
West Des Moines, IA 50266  
Attn: Legal Dept.
  
- (b) in the case of the City: City of Robbinsdale  
4100 Lakeview Avenue North  
Robbinsdale, Minnesota 55422  
Attn: City Manager

and with a copy to: Kennedy & Graven, Chartered  
470 U.S. Bank Plaza  
200 South Sixth Street  
Minneapolis, MN 55402  
Attn: Ronald H. Batty

10. **Execution in Counterparts.** This Agreement may be executed and delivered in two or more counterparts, each of which, when so delivered, shall be an original, but such counterparts shall together constitute but one and the same instrument and agreement. This Agreement shall be deemed to be effective on the last such day any such counterpart is executed.

11. **Right to Bind Corporation.** The person signing this Agreement on behalf of the Redeveloper hereby warrants that they have full legal authority to sign on behalf of the Redeveloper company and that such signature shall be binding on the company.

12. **Right to Complete and Assess; Waiver of Right to Challenge.** In the event that the Redeveloper fails to complete the Minimum Improvements as required herein, the City may elect, at its sole discretion, to cause the Minimum Improvements to be completed as outlined herein. Should the City take such action under this Agreement, Redeveloper hereby authorizes the City to complete all necessary work to complete the Minimum Improvements, and to assess such amounts to the Property pursuant to Minnesota Statutes, Chapter 429 without notice of hearing or hearing. Such amounts recoverable by the City under this Section shall be no more than \$\_\_\_\_\_ (estimated to be 110% of construction cost, to be calculated). The Redeveloper hereby agrees to waive its right and ability to challenge the amount or basis of the assessment under Minnesota Statutes, Chapter 429.

13. **Choice of Law.** The parties hereto agree that this Agreement and any documents related hereto shall be construed under the laws of the state of Minnesota, without any reliance on choice of law principles.

14. **Recording.** The City intends to record this Agreement among the land records of Hennepin

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County, Minnesota and the Redeveloper agrees to pay for the cost of recording same.

[SIGNATURES ON FOLLOWING PAGES]

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IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the date first above written.

CITY OF ROBBINSDALE

By: \_\_\_\_\_  
Regan L. Murphy  
Its: Mayor

By: \_\_\_\_\_  
Marcia Glick  
Its: Manager

STATE OF MINNESOTA    )  
                                      ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument as acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by Regan L. Murphy, the Mayor, and Marcia Glick, the City Manager, of Robbinsdale, a municipal corporation under the laws of Minnesota, on behalf of the municipal corporation.

\_\_\_\_\_  
Notary Public



**EXECUTION COPY**

HY-VEE, INC., AN IOWA CORPORATION

By: \_\_\_\_\_  
Jeffrey Markey, Sr.  
Its: Vice President

By: \_\_\_\_\_  
Nathan Allen  
Its: Assistant Secretary

STATE OF IOWA            )  
                                  ) ss.  
COUNTY OF POLK        )

The foregoing instrument was executed before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by Jeffrey Markey, the Senior Vice President, and Nathan Allen, the Assistant Secretary, respectively, of Hy-Vee, Inc., an Iowa corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public

This document drafted by:

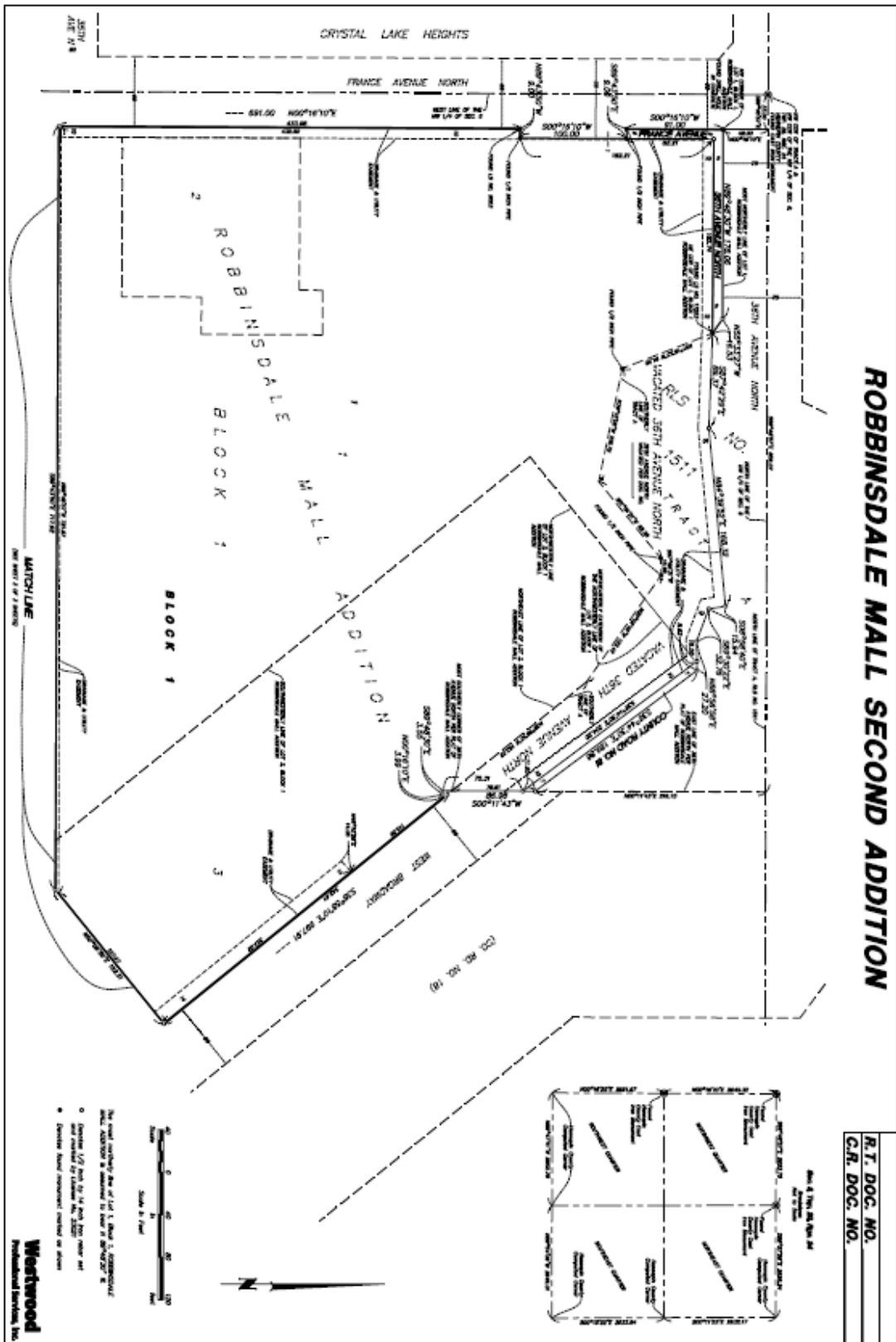
Kennedy & Graven, Chartered (AMB)  
400 U.S. Bank Plaza  
200 South Sixth Street  
Minneapolis, MN 55402

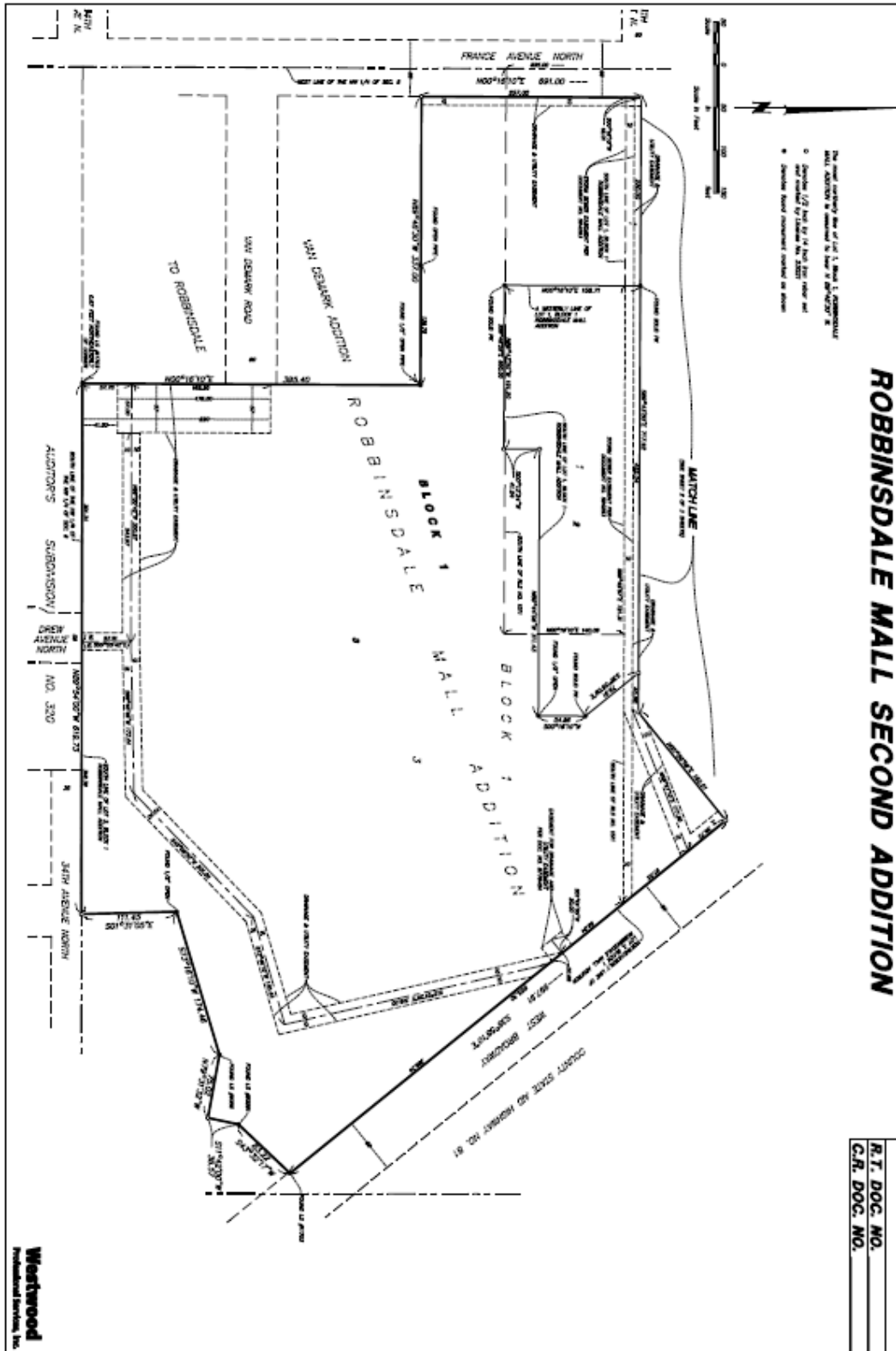
**EXHIBIT A**

**Legal Description of Property**

Lot 1, Block 1, Robbinsdale Mall Second Addition, Hennepin County, Minnesota.







The above plat is a true and correct copy of the original as shown to the City of Robbinsdale, Minnesota, on this 15th day of June, 2020.

Approved: [Signature]

Notary Public for the State of Minnesota

**ROBBINSDALE MALL SECOND ADDITION**

R.T. DOC. NO. \_\_\_\_\_  
 C.R. DOC. NO. \_\_\_\_\_

**Westwood**  
 PROFESSIONAL SERVICES, INC.

**Exhibit C**

**Form of License Agreement**

This license agreement (the “License Agreement”) is hereby entered into by any between the City of Robbinsdale, a municipal corporation under the laws of Minnesota, having its principal office at 4100 Lakeview Avenue, Robbinsdale, Minnesota 55422 (the “City”), and Hy-Vee, Inc., an Iowa corporation, having its principal office at 5820 Westown Parkway, West Des Moines, IA 50266 (the “Redeveloper”). This License Agreement is subject to the terms contained herein.

1. Use of Property. The City hereby grants the Redeveloper for the benefit of the Redeveloper property legally described on Exhibit C attached hereto (the “Redeveloper Property”), a license to use that portion of the City’s right-of-way located adjacent to County Road 81, consisting of a portion of the property legally described in Exhibit A which is visually depicted on Exhibit B attached hereto and incorporated herein by this reference (the “License Property”), for the purposes of access and parking for itself, its owners, employees, contractors, service providers, customers, invitees and agents of the Redeveloper Property.

2. Construction and Maintenance of Improvements. This License Agreement shall allow the Redeveloper to construct bituminous access drive and parking surfaces and facilities within the License Property. The Redeveloper shall be solely responsible for future maintenance and repair of these improvements, including patching. Additionally, the Redeveloper shall be solely responsible for snow and ice removal within the License Property.

3. Termination. The City may, at its sole option, terminate this License Agreement without cause upon 30 days’ notice to the Redeveloper. This section notwithstanding, the City agrees that it shall not take any action to terminate or otherwise interfere with the Redeveloper’s right to use the License Property for the purposes of parking and access for the entire time in which the Redeveloper may own the Redevelopment Property. This license shall automatically terminate pursuant to Section 7 herein, upon the occurrence of all conditions stated therein.

4. Indemnity. The Redeveloper hereby agrees to indemnify and hold harmless the City, its employees and agents against any and all claims arising from this License Agreement or from the Redeveloper’s use of the License Property, except to the extent caused by the negligence or willful misconduct of the City. The Redeveloper further agrees to defend the City against all such claims for which Redeveloper is obligated to indemnify the City. Nothing herein shall be construed as a limitation on or waiver of the immunities granted to the City by Minnesota Statutes, Chapter 466.

5. Recording. The Redeveloper shall cause this License Agreement to be recorded in the land records of Hennepin County. The Redeveloper shall be solely responsible for all costs associated therewith.

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6. Successors in Interest. This License Agreement shall run with the land of the License Property and the Redeveloper Property and shall be binding upon the heirs, successors and assigns of the owner of the Redeveloper Property and the License Property, as expressed herein.

7. Termination of License Upon Acquisition of Fee Title. The license granted hereunder shall terminate without further action by the City upon the Redeveloper’s acquisition of fee title to the License Property through a title registration action or otherwise.

For good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto agree on the \_\_\_ day of \_\_\_\_\_, 2016.

CITY OF ROBBINSDALE

By: \_\_\_\_\_  
Regan Murphy  
Its: Mayor

By: \_\_\_\_\_  
Marcia Glick  
Its: Manager

STATE OF MINNESOTA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument as acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by Regan Murphy, the Mayor, and Marcia Glick, the City Manager, of Robbinsdale, a municipal corporation under the laws of Minnesota, on behalf of the municipal corporation.

\_\_\_\_\_  
Notary Public

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HY-VEE, INC., AN IOWA CORPORATION

By: \_\_\_\_\_  
Jeffrey Markey  
Its: Sr. Vice President

By: \_\_\_\_\_  
Nathan Allen  
Its: Assistant Secretary

STATE OF IOWA            )  
                                  ) ss.  
COUNTY OF POLK        )

The foregoing instrument was executed before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by Jeffrey Markey, the Senior Vice President, and Nathan Allen, the Assistant Secretary, respectively, of Hy-Vee, Inc., an Iowa corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public

This document drafted by:

Kennedy & Graven, Chartered (AMB)  
400 U.S. Bank Plaza  
200 South Sixth Street  
Minneapolis, MN 55402



**EXECUTION COPY**

**Exhibit A to License Agreement**

**Legal Description of City Right of Way**

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**Exhibit B to License Agreement**

**Visual Depiction of License Property**

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**Exhibit C to License Agreement**

**Legal Description of Redeveloper Property**